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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/297,737	05/04/2001	Juliette Quartararo	PET-1761	1202

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EXAMINER

NORTON, NADINE GEORGIANNA

ART UNIT	PAPER NUMBER
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1764

DATE MAILED: 01/13/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/297,737

Applicant(s)

QUARTARARO ET AL.

Examiner

Nadine Norton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-6, 8-10, 12-15, 17-19, 21 and 22 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

- 5) ☐ Claim(s) _____ is/are allowed.

- 6) ☒ Claim(s) 2-6, 8-10, 12-15, 17-19, 21 and 22 is/are rejected.

- 7) ☐ Claim(s) _____ is/are objected to.

- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Withdrawal of Claim Objections

Applicants' amendments in paper no.19, filed 11-4-02 overcome the previous objections to the claims.

Withdrawal of Claim Rejections Under 35 USC § 112

Applicants' amendments in paper no. 18, filed 11-04-02 overcome the previous 112 rejection to the claims.

Response to Amendment

Applicants' amendment filed 11-4-02 in paper no. 18 is considered to include the cancellation of claim 1. The language of "replace claim 1 with new claim 22" is interpreted to serve as an indication to delete claim 1 in favor of new claim 22. In the future, it is suggested that applicants' use the terms "cancel" or "delete" instead of "replace" when referring to the removal of claims.

Withdrawal of Claim Rejections Under 35 USC § 102 and/or 103

Applicants' amendments submitted 11-4-02 in paper no.18 are sufficient to overcome the previous 102 and 103 rejections over Kittrell (3,617,485), the 103 rejection over EP 0,573,973 in view of Heck et al.(4,430,198), the 102 rejection over EP 0,573,973 and the 103 rejection over GB 2,066,690.

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Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2-6, 8, 10, 12-15, 17-20 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Antos (4,463,104).

The reference of Antos et al.(4,463,104) discloses a catalyst composition. The composition contains a VIIB component in the form of rhenium or manganese, a phosphorous component, a matrix component in the form of alumina, a non-noble group VII metal component in the form of nickel, and molybdenum. See column 3, lines 56-66, column 4, lines 16-26 and column 6, lines 25-56. The reference teaches that the catalyst may also contain sulfur. See column 4, lines 14-16.

Antos et al.(4,463,104) further teaches that the catalyst of Antos et al.(4,463,014) can be employed in a hydrocracking process. See column 4, line 35. Suitable feeds include those in the gasoline boiling range. See column 4, lines 34-36.

The reference of Antos et al.(4,463,104) succeeds at disclosing a catalyst with components corresponding to those claimed by applicants. In addition, the reference succeeds in disclosing the use of the disclosed composition in a hydrotreating process in the form of hydrocracking.

Applicants' process and composition are anticipated by the reference of Antos et al.(4,463,104) because it discloses essentially the same process and composition.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 2-6, 8-10, 12-15, 17-20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Antos et al.(4,463,104).

The reference of Antos et al.(4,463,104) discloses a catalyst composition. The composition contains a VIIB component in the form of rhenium or manganese, a phosphorous component, a matrix component in the form of alumina, a non-noble group VII metal component in the form of nickel, and molybdenum. See column 3, lines 56-66, column 4, lines 16-26 and column 6, lines 25-56. The reference teaches that the catalyst may also contain sulfur. See column 4, lines 14-16.

Antos et al.(4,463,104) further teaches that the catalyst of Antos et al.(4,463,014) can be employed in a hydrocracking process. See column 4, line 35. Suitable feeds include those in the gasoline boiling range. See column 4, lines 34-36. The reference further teaches that the disclosed catalyst can be used in other reactions including denitrognation and desulfurization. See column 10, lines 20-25.

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The reference of Antos et al.(4,463,104) succeeds at disclosing a catalyst with components corresponding to those claimed by applicants. In addition, the reference succeeds in disclosing the use of the disclosed composition in a hydrotreating process in the form of hydrocracking.

It is noted that the reference of Antos et al.(4,463,104) is silent about the specific proportions of the catalyst components.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to select any proportion of components that produces an effective catalyst, including the specific proportions claimed by applicants, because it has been held that there is no invention where the difference in proportions is not critical and was ascertained by routine experimentation because the determination of workable ranges is not considered to be inventive. See In re Swain and Adams 70 USPQ 412 (CCPA 1946).

Response to Arguments

Applicants' arguments filed in paper no.18 have been fully considered but they are not persuasive.

Applicants' arguments against the reference of Antos et al.(4,463,104) are not persuasive. It is maintained that in the absence of unexpected results any combination of metals disclosed by the reference of Antos et al.(4,463,104) would effectively perform the desired conversion. In addition, the 1.132 Declaration in paper no.17, filed 11-4-02, is not considered to show unexpected results over the composition of Antos et al.(4,463,104) because Antos et

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al.(4,463,104) requires the presence of phosphorous. One can not distinguish a claimed invention over the closest prior art by pointing to unexpected results derived from a catalyst component (e.g. phosphorous) also "required" by the closest prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nadine Norton whose telephone number is 703-305-2667. The examiner can normally be reached on Monday through Thursday from 7:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on 703-308-6824. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-0661.

N.N.

January 11, 2003

NADINE G. NORTON
PRIMARY EXAMINER

